

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

THOMAS JOHN SMITHSON,

Petitioner, No. CIV S-01-1373 GEB DAD P

vs.

DERRAL ADAMS, Warden, et al.,

Respondents. ORDER

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This matter came before the undersigned on July 1, 2005, for hearing of petitioner's motion for evidentiary hearing. Daniel J. Broderick appeared on behalf of Ann C. McClintock for petitioner, and Steve Herndon appeared on behalf of Harry Joseph Colombo for the respondents.

Upon consideration of the entire record, the undersigned finds that petitioner is entitled to an evidentiary hearing with regard to his claim that the prosecutor failed to disclose exculpatory evidence. See Williams v. Taylor, 529 U.S. 420, 437 (2000); Horton v. Mayle, 408 F.3d 570, 581-82 & n.6 (9th Cir. 2005); Baja v. Ducharme, 187 F.3d 1075, 1078-79 (9th Cir. 1999); Turner v. Duncan, 158 F.3d 449, 458 (9th Cir. 1998). The evidentiary hearing on petitioner's Brady claim will be set after respondents have had an opportunity to make a motion for discovery and that motion has been resolved.

1 Accordingly, IT IS HEREBY ORDERED that:

2 1. Petitioner's May 18, 2005 motion for evidentiary hearing is granted;

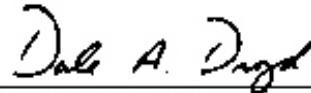
3 2. Respondents' motion for discovery shall be filed and served on or before

4 August 12, 2005, and shall be noticed for hearing before the undersigned on September 23, 2005,
5 at 10:00 a.m. in Courtroom 27;

6 3. Petitioner's opposition or statement of non-opposition to respondents' motion
7 for discovery shall be filed and served on or before September 2, 2005; and

8 4. Respondents' reply, if any, shall be filed and served on or before September
9 16, 2005.

10 DATED: July 5, 2005.

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12 DALE A. DROZD
13 UNITED STATES MAGISTRATE JUDGE
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